

FILED

JUL 20 2020

CLERK SUPREME COURT

In the Iowa Supreme Court

**In the Matter of Adopting State
Court Administration's
Proposed Amendments to
Chapter 47, Court Interpreter
and Translator Rules**)
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)
)

Order

On March 9, 2020, the Iowa Supreme Court requested public comment on proposed amendments to Chapter 47, Court Interpreter and Translator Rules. Upon close of the public comment period and further consideration of the proposed amendments, the court adopts amendments as provided with this order to be effective October 1, 2020.

The amendments include:

- Establishing a procedure for applying for an interpreter in an appellate case.
- Clarifying one of the exceptions to the priorities for selecting a court interpreter.
- Expanding the use of remote audio and video interpreter services.
- Modifying the procedure for appointing remote interpreters for initial appearances in criminal cases.
- Requiring defined roles in court orders appointing interpreters.
- Clarifying the criteria for a voluntary waiver of separate interpreters for separate limited English proficient parties in a case.
- Adding additional procedures with respect to the use of multiple interpreters for a proceeding.
- Eliminating the annual continuing education reporting fee for interpreters.
- Requiring more detail when submitting an application for written translation of court-related materials and expanding the role of district

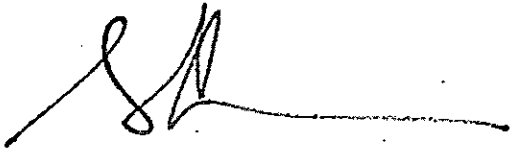
court administration in the location, selection, and payment of translators for these materials.

- Establishing new procedures for the interpretation of legally binding documents.

The amendments to the Iowa Court Rules provided with this order are effective October 1, 2020.

Dated this 20th day of July, 2020.

The Supreme Court of Iowa

By 

Susan Christensen, Chief Justice

Copies to:

Iowa Supreme Court
Iowa Court of Appeals
Chief Judges
Senior Judges
District Court Judges
District Associate Judges
Judicial Magistrates
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Administrative Law Judges
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Clerks of Court
Iowa Juvenile Court Officers
State Public Defender
Iowa Judges Association
Iowa Association of Administrative Law Judges
Iowa Clerk of Court Association
Iowa Magistrates Association
The Iowa State Bar Association
Polk County Bar Association (Carol Phillips)
Iowa Academy of Trial Lawyers
Iowa Association for Justice
Iowa Legal Aid
Iowa Defense Counsel Association
Iowa Association of Criminal Defense Lawyers
Public Defenders Association of Iowa
Iowa County Attorneys Association
Director of the Deaf Services Commission of Iowa
Drake University Law School
University of Iowa College of Law
Creighton University School of Law

CHAPTER 47
COURT INTERPRETER AND TRANSLATOR RULES

[Prior to April 1, 2008, see Chapter 14]

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Rule 47.3 Scheduling and appointing a court interpreter.

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47.3(2) *Application for appointment of a court interpreter.*

a. Cases in district court. An attorney must file an application for appointment of a court interpreter with the clerk of court as soon as the attorney learns that the attorney's client or a witness for a client needs an interpreter for a district court proceeding. A self-represented party should file an application for appointment of a court interpreter with the clerk of court as soon as possible after the party learns that the party or a witness for the party needs an interpreter for a court proceeding. Court personnel should obtain the assistance of an interpreter by telephone or in person while helping an unrepresented LEP party complete the form.

b. Cases in the appellate courts. When an attorney represents an LEP party in a case on appeal, the attorney must file any application for appointment of a court interpreter in the district court where the case originated.

....

47.3(6) *Exceptions to the priorities for selecting a court interpreter.*

a. Court proceedings within a magistrate's jurisdiction. For any court proceeding within a magistrate's jurisdiction, except a court proceeding involving a simple misdemeanor domestic assault charge, the court may appoint a reasonably available Class B or Class C noncertified interpreter on Iowa's roster of court interpreters before seeking the services of a Class A certified interpreter.

b. Interpreter required on short notice. If a court receives notice for the need of an interpreter on the day the court proceeding is scheduled to occur or after 4 p.m. the previous workday, and the court determines that rescheduling the court proceeding would not be appropriate under the circumstances, the court may appoint the highest classified interpreter who is available to interpret at the required time and location. A Spanish interpreter, ~~however~~, must be at least a Class C interpreter, and an American Sign Language interpreter must be at least a Class B interpreter.

c. ~~Unavailability of~~ No reasonably available certified court interpreter resides within 150 miles of the courthouse.

(1) If court personnel are unable to locate a reasonably available certified court interpreter for a legal proceeding in an indictable criminal case or termination of parental rights case within 150 miles of the courthouse, court personnel will conduct a regional or national search.

(2) If court personnel are unable to locate a reasonably available certified court interpreter for cases other than indictable criminal or termination of parental rights within 150 miles of the courthouse, court personnel may conduct a regional or national search.

(3) If court personnel are unable to locate an available certified court interpreter after a regional or national search, court personnel will attempt to locate a noncertified interpreter who is on the Iowa roster of court interpreters or who is on a list of qualified noncertified interpreters maintained by another state court system.

47.3(7) *Interpreter services through remote audio or video communications technology.*

a. For a ~~brief~~ court proceeding expected to last ~~30 minutes~~ approximately two hours or less, a court may appoint an appropriate interpreter available through a remote audio or video interpreter service.

b. A court may appoint a remote audio or video interpreter only from a service the state court administrator has approved.

c. A remote video sign language interpreter must be a Class A certified interpreter or Class B noncertified interpreter as defined in rule 47.4(1) or 47.4(2).

d. For a ~~brief~~ court proceeding expected to last ~~30 minutes~~ approximately two hours or less, a court may appoint a remote Class A certified interpreter or Class B noncertified interpreter instead of a less qualified interpreter available to interpret in person.

e. The court will enter into the record of the court proceeding the interpreter's name, the interpreter services company that provided the interpreter (if applicable), and the interpreter's formal education, interpreter testing and training, experience as an interpreter, and experience as a court interpreter.

f. A court may approve a remote interpreter only if the court concludes that the interpreter has the qualifications to be a competent court interpreter.

g. Before or at a court proceeding for which a remote interpreter is appointed to facilitate communication with an LEP participant, the court will enter an order appointing the remote interpreter consistent with rule 47.3(8). For an initial appearance in a criminal case, the court may orally appoint the interpreter prior to the proceeding and enter an order appointing the interpreter after the proceeding has been concluded, if necessary.

h. If the court declines to appoint an interpreter who appears at a court proceeding or discontinues use of an interpreter after a court proceeding has begun and the hearing will be approximately ~~30 minutes~~two hours or less, the court may obtain an interpreter through a remote interpreter service approved by the state court administrator; otherwise the court may postpone the court proceeding to allow time for court personnel to procure the services of a qualified interpreter consistent with the criteria in rules 47.3(4) through (6).

47.3(8) Order appointing a court interpreter.

a. When a court interpreter is identified consistent with rule 47.3, the court will enter an order appointing the interpreter prior to the legal proceeding, unless the court has previously entered an order appointing the interpreter for all subsequent proceedings in the case.

b. When the court appoints an interpreter for an LEP defendant at an initial appearance, whether the interpreter appears in person or through a remote interpreter service, the order appointing the interpreter must also include the appointment of a qualified interpreter for all subsequent proceedings in the case consistent with rules 47.3(4) through (7), or the order must direct the district court administrator to schedule a qualified interpreter for all subsequent proceedings in the case consistent with rules 47.3(4) through (7).

c. An order appointing an interpreter must specify whether the interpreter is appointed for a specific court proceeding or all court proceedings in the case and whether an interpreter also is appointed to assist with attorney-client communications, settlement communications, depositions, witness interviews, and other reasonable preparations prior to the scheduled court proceeding or proceedings for which the interpreter has been appointed.

d. An order appointing an interpreter must identify the interpreter's classification under rule 47.4, identify the sign or oral language for which the interpreter is needed, and set the level of compensation for the interpreter consistent with the state court administrator's standard statewide fees and policies for compensation.

. . . .

47.3(12) *Number of court interpreters.*

a. A court may appoint more than one interpreter if it finds a reasonable basis for multiple interpreters for the court proceeding.

b. When a party needs an interpreter and the court expects the interpreted event on a given day to be complex or to last more than four hours, the court must appoint more than one interpreter to serve as a team or as relay interpreters during the court proceeding and may appoint more than one interpreter for a deposition.

c. When determining whether a court proceeding that is expected to be less than four hours is complex, the court may consider the following: the number of parties or participants who will need an interpreter; whether both a witness and a party will need an interpreter at the same time; whether technical or specialized terms will be used frequently in the court proceeding; and whether the gravity of the court proceeding enhances concern for the accuracy of the interpretation.

d. When two or more parties with adverse interests in a case need an interpreter of the same language, the court will appoint a separate interpreter for each party, unless the parties knowingly and voluntarily waive the right to separate interpreters on the record.

e. When the court appoints two or more interpreters for a proceeding, only one interpreter at a given time may provide the simultaneous interpretation of

the general court proceedings and the consecutive interpretation of witness testimony for the LEP parties, while any additional interpreter will provide interpretation for attorney-client communications during the proceeding. In this situation, the proceedings and witness interpreter will use a mobile microphone and transmitter, and the LEP parties will use mobile receivers with headphones. The interpreters must rotate the duty of interpreting the proceedings and witness testimony at least once per hour.

f. When a proceeding will be more than four hours, and two or more LEP parties or LEP parties and witnesses need an interpreter, the court may appoint fewer than two interpreters for each LEP party and direct the interpreters to work as a team to provide interpreting services for attorney-client communications and for general proceedings and witness interpretation as described in rule 47.3(12)(e).

g. When an appointed American Sign Language (ASL) interpreter reports difficulty communicating with an LEP participant, the court may appoint a certified deaf interpreter (CDI) to work as a relay interpreter with the ASL interpreter.

h. Whenever a government entity will be responsible for paying the interpreters, more than one interpreter will be paid for services during the same court or legal proceeding only if a court enters an order appointing more than one interpreter.

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Rule 47.8 Application; and test registration; ~~continuing education fees.~~

47.8(1) The application fee to be an oral or sign language court interpreter is \$25. This fee cannot be waived or refunded.

47.8(2) The registration fee for the two written examinations identified in rule 47.4(1)(a) is \$50 for Iowa residents and \$100 for nonresidents. If the applicant has already passed at least one of the two examinations, the registration fee is \$25 for Iowa residents and \$50 for nonresidents.

47.8(3) The registration fee for each oral proficiency interview examination is \$65 for Iowa residents and \$130 for nonresidents.

47.8(4) The registration fees for the three-part oral interpretation certification examination approved by the NCSC's Language Access Services Section is \$250 for Iowa residents and \$500 for nonresidents.

47.8(5) ~~The annual continuing education reporting fee is \$10.~~

47.8(6) ~~All fees set forth in this rule must be paid to the OPR. The interpreter application fee is due at the time the application is filed. Test registration fees are due on or before the registration deadline established by the OPR. The annual continuing education reporting fee is due by May 15 of each year beginning in 2017.~~

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Rule 47.13 Written translations of court-related material.

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47.13(5) *Application for written translation of court-related materials.* When a party or attorney in a case involving an LEP person wants a written translation of court-related material from English into another language, or from another language into English, and the court or other government entity will be responsible for paying the translator, the LEP person or the LEP person's attorney must file with the court a timely application for a written translation of court-related material. The application must include:

a. An explanation of the need for a written translation of the court-related material and why an oral or sign language interpretation of the court-related material would not be sufficient to ensure due process under the circumstances.

b. ~~The name, contact information, qualifications, and certifications of the proposed translator.~~ If the court-related material is a written document, the application must also include:

(1) A brief description of the document's content.

(2) The language in which the document is written.

(3) The language into which the document should be translated.

(4) The number of words in the document to be translated.

c. If the court-related material is an electronic recording of communications with an LEP person, the application must also include:

(1) A brief description of the nature of the communications.

(2) The number of persons involved in the communications.

(3) The languages spoken by the persons involved in the communications.

(4) Whether a language interpreter was one of the persons involved in the communications.

(5) The number of minutes of recorded communication involving one or more LEP persons, the hourly fee or fee per word to be paid to the translator, and the total translation fee to be paid to the translator.

(6) Whether the applicant is requesting only a transcript of what the English-speaking person said and a translation into English of what the LEP person said during the communication or a transcript of what the English-speaking person said and a translation of what the LEP person said and an evaluation of the accuracy of the interpretation of an interpreter involved in the communication, if applicable.

47.13(6) *Court approval of written translation and translator.* The court may approve the application for the written translation of court-related material only if an oral or sign language interpretation of the material would not be sufficient to ensure due process under the circumstances. If the court approves a written translation of court-related material, ~~the court may approve the translator identified in the application if the translator meets the criteria in rule 47.13(3), or the court may decline to appoint the translator identified in the application and appoint a substitute translator by applying the criteria in rule 47.13(3) will~~ direct district court administration staff to locate a translator who meets the criteria in rule 47.13(3) and to comply with the policies for locating and paying translators as established by state court administration. After district court administration staff has located a qualified translator and agreed upon a fee for the translation service, the court will enter an order approving a written translation of court-related material and appointing the translator.

Rule 47.14 Interpretation of legally binding documents submitted to the court.

47.14(1) *Legally binding documents.* For the purpose of this rule, “legally binding documents” include but are not limited to settlement agreements, consent decrees, and guilty pleas.

47.14(2) *Selection of an interpreter to interpret a legally binding document outside a court proceeding.* When an interpreter is required to interpret a legally binding document outside a court proceeding, attorneys must use the highest classified interpreter consistent with the priorities for selecting an oral language interpreter in rule 47.3(4) or the priorities for selecting a sign language interpreter in rule 47.3(5) and may seek assistance from district court administration staff to locate an interpreter who meets these qualifications.

47.14(3) *Remote interpreters.* Attorneys may use a remote interpreter via telephone or video conference to interpret a legally binding document for an LEP party and must give preference to an interpreter the court has already appointed to interpret for the LEP party.

47.14(4) *Certification of interpretation of a legally binding document.* When a party or attorney submits to the court a legally binding document that involves an LEP party, the person submitting the document to the court must also submit a court-approved “Certification of Interpretation of a Legally Binding Document” form in which the interpreter who interpreted the legally binding document for the LEP party includes:

a. A statement that the interpreter completely and accurately interpreted the legally binding document from English into the LEP party’s primary language to the best of the interpreter’s ability and in the presence of the LEP party.

b. The interpreter’s classification as determined by rule 47.4 or 47.5.

c. If certified, the interpreter must include the state or organization that awarded the certification and the date of certification. If not certified, the interpreter must include the interpreter’s classification on Iowa’s roster of court interpreters or other state court’s roster and include the interpreter’s educational background with a list of degrees and institutions awarding each degree.

d. A certification pursuant to Iowa Code section 622.1 using substantially the following form:

“I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Date

Signature”

Rule 47.15 Application of rules to administrative agency proceedings. To the extent an administrative agency is subject to these rules pursuant to Iowa Code section 622A.7 or 622B.1(2), the agency is responsible for appointing interpreters to appear in agency proceedings and for approving interpreters’ claims for compensation.

Rule 47.15Rule 47.16 Administration.

47.15(1)47.16(1) The OPR assistant director for admissions will serve as the principal executive officer for matters pertaining to the qualifications, classification, examination, continuing education, and discipline of court interpreters. The OPR director may, subject to the approval of the supreme court, employ such other employees as may be necessary to carry out the duties of this chapter of the Iowa Court Rules.

47.15(2)47.16(2) At least 60 days prior to the start of each fiscal year, the director of the OPR will submit to the supreme court for consideration and approval a budget for the upcoming fiscal year covering the operations provided for in this chapter. The supreme court’s approval of the budget authorizes payment as provided in the budget. A separate bank account designated as the court interpreter operating account must be maintained for payment of authorized expenditures as provided in the approved budget. Fees or other funds received or collected as directed in this chapter or in accordance with an

approved interagency agreement will be deposited in the court interpreter operating account for payment of the expenditures authorized by the approved budget.

Rule 47.16Rule 47.17 Immunity.

47.16(1)47.17(1) *Claims.* Claims against the OPR director, assistant directors, and staff, or against members of the advisory committee, are subject to the State Tort Claims Act set forth in Iowa Code chapter 669.

47.16(2)47.17(2) *Immunity.* The OPR director, assistant directors, and staff and members of the advisory committee are immune from all civil liability for damages for the conduct, communications, and omissions occurring in the performance of and within the scope of their official duties under these rules.

47.16(3)47.17(3) *Qualified immunity.* Records, statements of opinion, and other information regarding an interpreter that are communicated by an entity, including any person, firm, or institution, without malice, to the OPR director, assistant directors, and staff, and the members of the advisory committee are privileged; civil suits for damages predicated thereon may not be instituted.

Rule 47.18 Forms.

In the Iowa District Court for _____ County

County where this Certification is filed

Plaintiff/Petitioner

Full name of Plaintiff/Petitioner

vs.

Defendant/Respondent

Full name of Defendant/Respondent

Case no. _____

**Certification of Interpretation of a
Legally Binding Document**

Iowa Court Rule 47.14(4)

1. Certification statement

I, _____, certify the following: *Read, complete, and check if you agree*
Print your name

- ☐ I have completely and accurately interpreted the legally binding document submitted with this certification from English into _____, the limited English
LEP party's language
proficient (LEP) party's language, to the best of my ability and in the presence of _____.
name of LEP party

2. Interpreter's classification *Check A or B*

I am:

- A. ☐ An oral language court interpreter with the following certification: *Check one (Iowa Court rule 47.4)*

- ☐ Class A oral language court interpreter
☐ Class B oral language court interpreter
☐ Class C oral language court interpreter
☐ Unclassified oral language court interpreter
☐ Oral language interpreter on a list of qualified interpreters approved by another state

State: _____

Classification level: _____

- B. ☐ A sign language court interpreter with the following certification: *Check one (Iowa Court rule 47.5)*

- ☐ Class A sign language court interpreter
☐ Class B sign language court interpreter

Continued on next page

3. Interpreter's certification *Check A or B*

I am:

- A. ☐ A certified interpreter *If you check this box, complete the next section*

State or organization of certification: _____

Date of certification: _____, 20____
Month Day Year

- B. ☐ Not a certified interpreter *If you check this box, complete the next section*

Educational background:

_____/_____/_____
Degree Date received Institution

_____/_____/_____
Degree Date received Institution

☐ *Check this box if you have attached a sheet with additional information.*

4. Oath and signature

I, _____, have read this Certification, and I certify under penalty
Print your full name: first, middle, last

of perjury and pursuant to the laws of the State of Iowa that the information I have provided
in this Certification is true and correct.

_____, 20____
*Month Day Year Signature**

Mailing address

City State ZIP code

(_____)_____
Phone number Fax number

Email address Additional email address, if applicable

**Whether filing electronically or in paper, you must handwrite your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*